

### REMARKS

Reconsideration of the application in light of the amendments and the following remarks is respectfully requested.

### **Status of the Claims**

Claims 2-10 and 12-18 are pending. Claims 2-10 and 12-17 have been amended. No new matter has been added. Claims 1 and 11 have been cancelled without prejudice or disclaimer of the subject matter recited therein.

Claim 2 has been amended to recite “a controlling unit operable to judge whether said plurality of queues is in a congestion state or in a non-congestion state.” Support for this amendment can be found at page 9, line 3 - page 10, line 1 of the specification.

Claim 10 has been amended to recite “judging whether at least one of the first and second queues is in a congestion state or in a non-congestion state.” Support for this amendment can be found at page 9, line 3 - page 10, line 1 of the specification. Additionally, claim 10 has been amended to recite all the elements of cancelled dependent claim 11

### **Allowable Subject Matter**

Applicants appreciatively acknowledge the Examiner's indication of allowable subject matter in claims 16-18. Claim 16 has been amended to be in independent form and recite all the features of its base claim. The Examiner has objected to claim 16 and 17 for containing informalities which Applicant submits have been addressed by these amendments. Thus, Applicants submit that claims 16-18 are in condition for allowance.

### **Rejection Under 35 U.S.C. § 112**

Claims 5-9 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Applicants have amended claim 5 to clarify that a “controlling unit is operable to judge that said plurality of queues is in the congestion state.” Claims 6-9 have been similarly amended.

Applicants submit that claims 5-9 are in conformance with 35 U.S.C. § 112, and respectfully request reconsideration and withdrawal of the rejection.

### **Rejection Under 35 U.S.C. § 103(a)**

Claims 1-4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,628,609 to Chapman et al. (“Chapman”) in view of U.S. Patent No. 6,678,244 to Appanna et al. (“Appanna”). Claim 1 has been cancelled, thus rendering the rejection moot with respect to claim 1.

Applicants submit that Appanna discloses “packets may be queued, for example, according to parameters set by a packet classification node (not shown) positioned upstream of the Q-node 74.” (Appanna, column 6, lines 11-14.) The packet stream is then directly transferred to the data path in the non-congestion state, and transferred to a queue in the congestion state.

Amended independent claim 2 recites a transferring unit that “transfers alternatively the packet received by said packet receiving unit directly to any one of said plurality of queues in the non-congestion state,” thereby bypassing the classifying device, and only “transfers the packet received by said packet receiving unit to said classifying device in the congestion state.”

In contrast, Appanna discloses a classifying device that is upstream from the Q-node, thereby classifying the packet stream prior to reaching the Q-node, even in non-congestion state. Therefore, Applicants submit that Appanna does not disclose or suggest bypassing a downstream classifying device when the system is not congested.

Applicants respectfully submit that Chapman in combination with Appanna neither discloses nor suggests all the features of amended independent claim 2.

Claims 3 and 4 depend from claim 2 and recite their own features in addition to the features of claim 2. Claims 3 and 4 are patentable over Chapman and Appanna for at least the same reasons discussed above with respect to claim 2. Therefore, Applicants respectfully submit that the Examiner has not met the burden of establishing a *prima facie* case of obviousness over claims 2-4. Reconsideration and withdrawal of the rejection is requested.

Claims 10-12, 14 and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,577,596 to Olsson et al. ("Olsson") in view of Appanna. Claim 11 has been cancelled, thus rendering the rejection moot with respect to claim 11.

The Examiner contends that Olsson discloses most of the features of claim 10. Claim 10 recites the step of "omitting the step of classifying when said congestion state does not exist." The Examiner contends that Appanna discloses this feature of claim 10 which is missing from Olsson. Applicants respectfully submit that for the reasons discussed above with regard to claim 2, Appanna does not disclose the feature missing from Olsson. Thus, the claimed invention is not obvious over Olsson in view of Appanna.

Claims 12, 14 and 15 depend from claim 2 and recite their own features in addition to the features of claim 10. Claims 12, 14 and 15 are patentable over Olsson and Appanna for at least the same reasons discussed above with respect to claim 10. Therefore, Applicants

respectfully submit that the Examiner has not met the burden of establishing a *prima facie* case of obviousness over claims 10, 12, 14 and 15. Reconsideration and withdrawal of the rejection is requested.

Claim 13 stands rejected under 35 U.S.C § 103 as being unpatentable over Olsson and Appanna in view of Chapman. Claim 13 depends from claim 10 and recite its own features in addition to the features of claim 10. Claim 13 is patentable over Olsson and Appanna in view of Chapman for at least the same reasons discussed above with respect to claim 10. Therefore, Applicants respectfully submit that the Examiner has not met the burden of establishing a *prima facie* case of obviousness over claim 13. Reconsideration and withdrawal of the rejection is requested.

### **CONCLUSION**

Each and every point raised in the Office Action dated August 8, 2005 has been addressed on the basis of the above amendments and remarks. In view of the foregoing it is believed that claims 2-9, 10, and 12-18 are in condition for allowance and it is respectfully requested that the application be reconsidered and that all pending claims be allowed and the case passed to issue.

Respectfully submitted,

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